

Memorandum

To : COMMISSIONERS
Delta Protection Commission

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File No.

Telephone: ATSS (8) 485-8178
(916) 445-8178

From : RICHARD M. FRANK
Supervising Deputy Attorney General
Office of the Attorney General - Sacramento

Subject : Differences Between State and Local Open Meeting Laws

At the Commission's January 29, 1993 meeting, Commissioner Keller asked this office to brief the Commission on the significant differences between the open meeting law applicable to local governments (the "Brown Act," Gov. Code §54950 ff.) and the counterpart statute applicable to state entities such as the Commission. (The "Bagley-Keene Act," Gov. Code § 11120 ff.) This memorandum responds to that request.

Introduction

The general purpose of both statutes--each of which was adopted by the California Legislature--is the same: to require that virtually all aspects of the decision-making process of multi-member state bodies and local legislative bodies are conducted in public. Moreover, the similarities between the two statutes far outnumber their differences.^{1/}

There are, nonetheless, several important distinctions between the Brown and Bagley-Keene Acts. These distinctions are summarized at pages 3-6 of the Attorney General's pamphlet (Open Meeting Laws (1989)) that was distributed to commissioners at the January meeting. A copy of those pages from the pamphlet is attached to this memorandum.

We nonetheless identify the following, key differences between the Brown and Bagley-Keene Acts:

1. There are distinct state statutes which address open meeting requirements applicable to the California Legislature, school districts, local hospital districts, the Regents of the University of California, and several organizations within the California State University system. We do not address those laws in this memorandum.

The ability to hold closed sessions for personnel matters is significantly more limited under the Bagley-Keene Act than is the case under the Brown Act. For example, an executive director of a state body is generally considered to be an "officer" rather than an "employee" of a state body under the Bagley-Keene Act. Accordingly, a decision by the Commission to hire or dismiss its executive director must be made in public session. (Gov. Code § 11126; see also, 68 Ops.Cal.Atty.Gen. 34 (1985) (discussion of appointment of executive director for California Transportation Commission must be conducted in public session).)

Finally, only the Brown Act provides for a closed session to consider the job performance of an employee; the Bagley-Keene Act contains no such exemption. (Cf. Gov. Code §§ 54957, 11126(a).)

b. Quasi-Judicial Deliberations

Under the Bagley-Keene Act, state and regional boards and commissions may hold closed sessions to deliberate on a decision to be reached based on evidence introduced in a proceeding conducted under the state Administrative Procedure Act "or similar provision of law." (Gov. Code § 11126(d).)

The Brown Act contains no comparable exemption, and the Attorney General has concluded that such an exemption is not impliedly authorized. (57 Ops.Cal.Atty.Gen. 189 (1974).)

4. Deadlines to Challenge Open Meeting Act Violations

Both the Brown and Bagley-Keene Acts provide for civil and criminal remedies to address violations of the open meeting laws. These remedies are comparable, with one notable exception relating to the statutes' civil sanctions.

Under the Brown Act, a person alleging that a local body has violated that statute must, within 30 days of the alleged violation, make a written demand that the board or commission cure or correct the violation. If the local entity fails or refuses to cure or correct the violation within 30 days, an interested person has 15 days from the time of receipt of the body's decision (not) to cure or correct in which to file suit to have the government action nullified. (Gov. Code § 54960.1.)

The process for judicial review under the Bagley-Keene Act is more straight-forward: a suit seeking to challenge the decision of a state body must be commenced within 30 days of the date of the challenged action. (Gov. Code § 11130.3.)

Conclusion

The state and local open meeting laws are quite similar in most respects. Nevertheless, they contain some significant

OPEN MEETING LAWS

1989

California Attorney General's Office

II. COMPARISON SUMMARY

Local and State Bodies

ISSUE	BROWN ACT (Local Member Bodies)	BAGLEY-KEENE ACT (State Multi-Member Bodies)
Coverage	Local multi-member bodies. (\$ 54952; see p. 8.)	State multi-member bodies created by statute or executive order. (\$ 11121; see p. 8.)
Advisory Committees	Covered unless comprised solely of less than a quorum of the parent body. (\$ 54952.3; see p. 13.)	Covered if comprised of three or more persons. (\$ 11121.8; see p. 14.)
Meeting Defined	Any gathering, formal or informal, of a quorum of the body at which information about the business of the body is received, discussed or voted upon. Meals, seminars, conferences, and serial communications may be included. (See discussion, p. 15.)	
Secret Ballots and Semi- closed Meetings	Prohibited. (See p. 34.)	Prohibited. (See p. 34.)
Public Parti- cipation at Meeting	Extensive safeguards regarding rights to attend and tape-record meetings and the right of the public to receive the same information provided to the members of the body. (§§ 54953.3, 54953.5, 54957.5, 11123, 11124, 11124.1, 11125.1.) The Brown Act specifically requires the body to provide for public testimony at meetings. (\$ 54954.3; see p. 31.)	
Notice of Regular Meeting	72-hour notice, including bind- ing agenda with brief general description of items to be covered at meeting. (\$ 54954.2; see p. 22.)	10-day notice, including binding agenda with specific description of items to be covered at meeting. (\$ 11125; see p. 26.)
Notice of Special Meetings	24-hour notice, including bind- ing agenda with specific description of items to be covered at meeting. (\$ 54956; see p. 26.)	Special meetings are not provided for by the Bagley-Keene Act. (See p. 27.)

ISSUE	BROWN ACT (Local Member Bodies)	BAGLEY-KEENE ACT (State Multi-Member Bodies)
<p>Real Property Negotiations</p> <p>Quasi-Judicial Deliberations</p> <p>Labor Negotiations</p> <p>Public Records & Confidentiality Privileges</p> <p>Minute Book</p>	<p>May be used to advise negotiator regarding price and terms when property and parties are publicly identified in advance. (§§ 54956.8, 11126(i); see p. 42.)</p> <p>The Brown Act contains no exemption for these purposes.</p> <p>May be used to advise negotiator regarding negotiations with represented and unrepresented employees. (§§ 54957.6, 11126(o); see p. 43.)</p> <p>Closed sessions must be expressly authorized. Closed sessions are not permitted based on implicit authorization of general public record or confidentiality statutes. (§§ 54962, 11132; see pp. 34, 42.)</p> <p>Confidential minute book of closed session transactions may be kept by body. (§ 54957.2; see p. 45.)</p>	<p>Permits deliberations by a body after an evidentiary hearing. (§ 11126(d); see p. 44.)</p> <p>Confidential minute book of closed session transactions must be kept by body. (§ 11126.1; see p. 45.)</p>
<p>Remedies</p> <p>Criminal Penalties</p>	<p>Misdemeanor sanctions when "action taken" with knowledge of violation. (§§ 54952.6, 54959; see p. 46.)</p>	<p>Attendance at meeting with knowledge that Open Meeting Act has been violated is punishable as misdemeanor. (§ 11130.7; see p. 46.)</p>
<p>Civil Remedy - Injunctive</p>	<p>Interested persons may bring suit for injunctive mandamus or declaratory relief. (§§ 54960, 11130; see p. 46.)</p>	